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No. 88-1833

In The

Supreme Court of the United States

October Term, 1988

JIM L. WILLIAMS,
Petitioner,
v.

BAPTIST MEDICAL CENTER,
DAVID W. CHESHIRE,
DAVID L. SALL
DAVID A. OREA,
Respondents.

BRIEF OF RESPONDENT BAPTIST MEDICAL CENTER IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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Questions Presented

1. Whether an appropriate basis exists for this Court to grant the Petition for Writ of Certiorari.

2. Whether the United States District Court properly dismissed Mr. Williams' complaint, as amended, for failure to state a cause of action upon which relief can be granted.

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STATUTES INVOLVED

Title 42, United States Code, Sections 1983, 1985(2) of the Civil Rights Act, and Title 42, United States Code, Section 9501.

STATEMENT OF THE CASE

On January 4, 1988, petitioner Jim L. Williams ("Williams"), filed his complaint in the United States District Court for the Middle District of Florida, Jacksonville Division, naming Southern Baptist Hospital of Florida, Inc., doing business as Baptist Medical Center ("BMC"), a private not-for-profit corporation, and several physicians in private practice as defendants. He filed Amendments to Original Complaint on January 7, 1988. Combined, these pleadings allege that while Mr. Williams was a patient in BMC's psychiatric ward, he was given an injection that impaired his functioning

during his commitment hearing held thirteen days later. The actions Mr. Williams claims gave rise to his claims all are alleged to have occurred between October and December, 1983.

Mr. Williams attempted to state a claim under Title 42, United States Code, §1983 and §1985(2) of the Civil Rights Act and Title 42, United States Code, §9501, commonly known as the "Mental Health Bill of Rights." BMC timely filed its motion to dismiss on January 25, 1988.

On April 8, 1988, Mr. Williams filed his Request to Amend Original Complaint and on April 21, 1988, filed another Request to Amend Original Complaint and Request to Enter Exhibits Relevant to Complaint. United States Magistrate Harvey E. Schlesinger entered an order on April 25, 1988, striking the requests for failure to comply with local rules 3.01 and 4.01, which prescribe the procedures for filing

motions and amending pleadings in the Middle District of Florida.

On May 26, 1988, the District Court entered an order granting the motion to dismiss, dismissing the complaint with prejudice and ordering the clerk of the court to enter judgment dismissing the case with prejudice. The clerk of the court entered judgment in accordance with the order on May 27, 1988. Mr. Williams filed his notice of appeal on or about June 1, 1988.

The applicable standard of review on appeal to the Eleventh Circuit Court of Appeals was de novo review. On January 13, 1989, the Eleventh Circuit affirmed the District Court's judgment. On January 26, 1989, Mr. Williams filed his notice of appeal to the Supreme Court of the United States, and on May 9, 1989, filed his Petition for Writ of Certiorari.

SUMMARY OF THE ARGUMENT

Mr. Williams has not alleged any basis upon which this court should grant his Petition for Writ of Certiorari. Mr. Williams' petition is devoid of any suggestion that there is a conflict between the lower courts' decisions and a decision of this Court or any court. Furthermore, Mr. Williams' petition demonstrates that the grounds upon which he appeals can have no application outside the unique and peculiar circumstances of his case. The lower courts reviewed the merits of Mr. Williams' complaint and determined that it could not state a claim upon which relief can be granted. Accordingly, Mr. Williams' Petition for Writ of Certiorari should be denied.

ARGUMENT

I. No basis exists for this Court to accept review of this case.

Rule 17 of the Rules of the Supreme Court provides "review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor." The Eleventh Circuit's decision affirming the District Court's dismissal of this action is not of special importance to the public and it does not conflict with any decision of this Court or of any circuit court.

In his petition, Mr. Williams fails to suggest any reason cognizable under Rule 17 why this Court should exercise its jurisdiction in this case. He has not alleged, and cannot allege, any decisional conflict. Mr. Williams also makes no attempt to demonstrate, nor can he

show any "special or important" reason for this Court to grant his petition. The lower courts based their decisions upon straightforward issues pertaining to the applicable statute of limitations and the sufficiency of Mr. Williams' complaint to state a claim under 42 U.S.C. Sections 1983, 1985(2) and 9501.

Although they considered each of the claims with the liberality properly accorded to pro se civil rights complaints, the lower courts nonetheless determined that they failed to state a claim upon which relief could be granted.

II. The District Court properly dismissed with prejudice Mr. Williams' complaint, as amended, for failure to state a claim upon which relief can be granted.

A. Mr. Williams' complaint, based on Title 42, United States Code, Sections 1983 and 1985(2), was barred by the statute of limitation.

The statute of limitations for actions filed under 42 U.S.C. Sections 1983 and 1985(2)

is the applicable state statute of limitations for personal injury tort actions. Wilson v. Garcia, 471 U.S. 261 (1985). The state statute applicable to this case is Florida Statutes §95.11(3)(o), which provides a four year limitations period. Marquis v. United States Sugar Corporation, 652 F. Supp. 598, 602 (S.D. Fla. 1987). The complaint alleges that the actions at BMC upon which the claims are grounded occurred more than four years prior to the filing of this action. Consequently, Mr. Williams' claims against BMC under 42 U.S.C. Sections 1983 and 1985(2) were properly dismissed with prejudice as untimely.

B. Even if the claim was not time-barred Mr. Williams did not and can not allege the factual elements necessary to sustain a claim under 42 U.S.C. Section 1983.

In order to allege a cause of action under Section 1983, Mr. Williams would have had to

plead that (a) BMC deprived him of a right secured to him by the Constitution or federal law, and (b) the deprivation occurred under color of state law. Simms v. Jefferson Downs, Inc., 611 F.2d 609, 611 (5th Cir. 1980)(citing cases).

Mr. Williams alleges that private physicians gave him drugs against his will while he was being treated in a private psychiatric facility. Nothing in the amended complaint suggests, nor could it, that any of the medical decisions made in treating Mr. Williams were influenced by state regulation nor that they were made by anyone for whom the state is responsible.

BMC is not a state actor. Rather, BMC's actions were the result of "medical judgment[s] 'made by private parties according to professional standards that are not established

by the state.'" Lanceford v. District of Columbia Board of Education, 745 F.2d 1577, 1581 (D.C. Cir. 1984), citing Blum v. Yaretsky, 457 U.S. 991, 1008 (1982). See also, Jarrell v. Chemical Dependency Unit of Acadiana, 791 F.2d 373 (5th Cir. 1986). Accordingly, even if the claims were not barred by the applicable statute of limitations, Mr. Williams could not state a claim under 42 U.S.C. 1983.

C. Even if the claim was not time-barred, Mr. Williams did not and can not allege the factual elements necessary to sustain a claim under 42 U.S.C. Section 1985.

In alleging a civil rights conspiracy under Section 1985, Mr. Williams relies on the first clause of Section 1985(2) which makes unlawful conspiracies "to deter, by force, intimidation or threat, any party or witness in any court of the United States from attending such court, or

from testifying to any matter pending therein, freely, fully and truthfully . . . ." The statutory language "any court of the United States" refers to federal, not state courts. Kimble v. D. J. McDuffie, Inc., 648 F.2d 340, 347 (5th Cir. 1981), cert. denied, 454 U.S. 1110 (1981).

Mr. Williams alleges that he was drugged against his will while a psychiatric patient at BMC, resulting in the impairment of his biological functioning during his state court involuntary commitment proceeding conducted under state law. Mr. Williams did not and could not allege that he was deterred from testifying in federal court. Accordingly, his claims against BMC under Section 1985(2) were properly dismissed with prejudice for failure to state a claim upon which relief can be granted.

D. **The allegations of the complaint under 42 U.S.C. Section 9501 fail to state a claim upon which relief can be granted.**

Section 9501 does not create a private right of action. The congressional intent of Section 9501 is made clear by its preamble, which states:

> "It is the sense of the Congress that each State should review and revise, if necessary, its laws to ensure that mental health patients receive the protection and services they require; and in making such review and revision, should take into account the recommendations of the President's Commission on Mental Health and the following . . ."

Section 9501 continues by listing certain "rights" which "should be accorded" persons admitted to mental health programs or facilities.

There is nothing in Section 9501 evidencing any congressional intent to confer substantive legal rights, much less provide a private right of action. Such intent being absent, Section 9501 is not properly the basis for a private cause of action. Cf., Pennhurst State School and Hospital v. Halderman, 451 U.S. 1 (1981) (holding that the provisions of the Developmentally Disabled "Bill of Rights" provisions, even more strongly worded than those of Section 9501, do not create enforceable rights and obligations). Accordingly, Mr. Williams' claims under Section 9501 were properly dismissed.

CONCLUSION

This court should not grant Mr. Williams' Petition for Writ of Certiorari. Mr. Williams has cited no decisional conflict with any court and his petition clearly demonstrates that his case has no import outside the narrow confines of his case. As such, there is no "special and important reason" for granting Mr. Williams' petition.

In reviewing Mr. Williams' complaint, the District Court went beyond the finding that the claims made were barred by the statute of limitations and determined that under no circumstances could Mr. Williams state a claim for relief. This Court's denial of Mr. Williams' petition is necessary to finally put

this matter to rest. The petition should be denied.

Respectfully submitted,

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App. 1

EXHIBIT A

BAPTIST MEDICAL CENTER'S
SHAREHOLDER
AFFILIATES AND SUBSIDIARIES
(excluding wholly owned subsidiaries)

Baptist Health, Inc.
Suncare Plans, Inc.
BMC of Georgia, Inc.
International Medical Care
Northeast Florida Breast Center, Inc.
Suncare HMO, Inc.
Southside Redevelopment Area, Inc.
MRI Shared Services
Baptist Medical Center of Port St. Joe, Inc.
United Urology
Baptist Home Health Services, Inc.
Surgicare Outpatient Center of Jax., Inc.
Jacksonville Surgery Center, Inc.
K & A Medical
Greenbrier Horizon Club Joint Venture

CERTIFICATE OF SERVICE

I hereby certify that forty copies of the foregoing have been furnished by first class mail, postage prepaid, to the Clerk of the Supreme Court, One First Street, N.E., Washington, D.C. 20543, and three copies have been furnished by first class mail, postage prepaid, to the plaintiff-appellant Jim L. Williams, P.O. Box 7083, Orange Park, Florida 32073, Roland Williams, Esq., attorney for David W. Chesire, M.D., 601 Blackstone Building, 233 E. Bay Street, Jacksonville, Florida 32202, Michael Davie, Esq., attorney for David L. Sall, M.D., P.O. Drawer 2069, Jacksonville, Florida 32203 and David A. Orea, M.D., Salisbury Lakes Medical Parke, 4237 Salisbury Road, Suite 407, Jacksonville, Florida 32216, this 12 day of June, 1989.

Thomas C. Wagner
Attorney

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